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*Exempt from Filing Fees Pursuant to  
Gov. Code § 6103*

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
10  
11

12 LAWRENCE E. STONE, SANTA CLARA  
COUNTY ASSESSOR,

No.

**PETITION FOR WRIT OF  
ADMINISTRATIVE MANDAMUS**

13  
14 Petitioner,

[CCP § 1094.5]

15 v.

16 SANTA CLARA COUNTY ASSESSMENT  
APPEALS BOARD NO. 1,

17  
18 Respondent.

19 FORTY NINER SC STADIUM COMPANY,  
LLC,

20  
21 Real Party in Interest.

22 The Santa Clara County Assessor ("Assessor") petitions this Court for a writ of  
23 administrative mandamus under Code of Civil Procedure §1094.5, directed to respondent Santa  
24 Clara County Assessment Appeals Board No. 1 ("AAB" or "Board"), and by this Petition alleges as  
25 follows:

26 1. This challenge to an administrative, property-tax determination concerns the proper  
27 assessment of the home team stadium for the San Francisco 49ers. The stadium is a 1.85 million-  
28

1 square-foot, red-and-white steel, open-air football arena, erected on public land in the heart of  
2 Silicon Valley, at a total cost of over one billion dollars (the “Stadium”).

3         2.         The Stadium was custom built to create the ultimate professional football fan  
4 experience and trumpeted as the most high-tech and premier venue of its kind in the world. Its  
5 construction was the product of a public-private partnership approved by local ballot measure in  
6 2010 with the expectation that the project would create new jobs, generate other economic activity,  
7 and support the local school district and the team’s new home city, the City of Santa Clara (“City”).

8         3.         The City set up a separate legal entity, the Santa Clara Stadium Authority (the  
9 “Authority” or “SCSA”), to facilitate construction and operation. The Authority leased land from  
10 the City and, in turn, leased the Stadium to the San Francisco Forty Niners SC Stadium Company  
11 (“the 49ers” or “StadCo”) for 40 years, with options to renew for an additional 20 years.

12         4.         The lease between the Authority and the 49ers imparted, by far, the lion’s share of the  
13 Stadium’s value and benefits to the 49ers: The 49ers were granted control over, and benefits from,  
14 the professional football-related uses for which the Stadium was designed; year-round control over  
15 the use of the venue; and exclusive rights to premier portions of the facility, among many other  
16 benefits.

17         5.         The Authority was granted the ancillary and subordinate right to revenue from events  
18 other than professional football, subject to overriding 49ers’ control over all events and a contractual  
19 requirement to funnel virtually all Authority revenue into funding the Stadium’s development and  
20 operating expenses. The Stadium is not expected to yield any reversionary value to the public  
21 entities when the 49ers’ decades-long leasehold ends; instead, it will likely cost tens of millions of  
22 dollars to demolish.

23         6.         The 49ers acknowledged in the lease their responsibility to pay property taxes on the  
24 resulting possessory interest in the Stadium, as required by state law. The property taxes generated  
25 by the possessory interest in the Stadium fund local public entities providing services to the  
26 Stadium’s surrounding residents and communities, including funding Santa Clara Unified School  
27 District, West Valley Community College, the City of Santa Clara, the County of Santa Clara, the  
28 County Office of Education, and a local water district.

7. In view of the 49ers' extensive, year-round control over the Stadium and assumption of virtually all of its direct economic value, the Assessor determined that the value of the Stadium should be considered property of the 49ers and thus fully taxable.

8. The 49ers appealed this determination to the AAB, the local administrative body charged with conducting impartial hearings on property assessment disputes between taxpayers and the County Assessor. In their appeal to the AAB, the 49ers argued that professional football rights and year-round control were worth even less than the Authority's subordinate rights, contending that the 49ers should be taxed based on a fraction of the Stadium's value.

9. Rather than undertaking the constitutionally required calculations, the AAB split the baby exactly in half. Employing precisely the form of expedient shortcut that California's Constitution and the property tax laws forbid, the AAB found that the Authority's and 49ers' distinct and lopsided bundles of property rights were each worth 50% of the Stadium's value—a position for which neither side argued, that no data supported, and that no lawful valuation method can justify.

10. The AAB's failure to perform its core duty to assess the 49ers' taxes based on a reasonable calculation of the full value of its possessory interest will drastically and immediately slash revenue for local schools and public services. And, if left unchallenged, the AAB's decision corrodes public confidence in the tax system's rationality and fairness. The Assessor therefore seeks remand to the AAB for an appropriate and lawful calculation.

## PARTIES

11. Petitioner Larry E. Stone, Santa Clara County Assessor, is an independently elected public official responsible for assessing all taxable property in Santa Clara County. (Rev. & Tax. Code, § 401; Gov. Code, § 24009; Santa Clara County Ordinance Sec. A4-2.) Funding for local services such as schools, police, and fire protection depends on the Assessor's faithful execution of his constitutional and statutory duty to assess all taxable properties at full value.

12. Respondent Santa Clara County Assessment Appeals Board No. 1 is a quasi-judicial body charged with reviewing local assessments. (Cal. Const., art. XIII, § 16; Rev. & Tax. Code, § 1620; Santa Clara County Ordinance Sec. A4-13.) In adjudicating taxpayer challenges, the Board is required by law to conduct evidentiary hearings and to render final decisions and is bound by the

1 same valuation principles and duties as the Assessor. (18 California Code of Regulations (the  
2 “Property Tax Rules”), Rule 324.)<sup>1</sup>

3 13. Real Party in Interest Forty Niner SC Stadium Company, LLC is a privately held  
4 corporation with a long-term lease in the Stadium and accompanying public land, a taxable  
5 possessory interest in real property under California law.<sup>2</sup>

6 **THE ASSESSOR’S CONSTITUTIONAL DUTY TO ASSESS PRIVATE**  
7 **RIGHTS IN PUBLIC PROPERTY AT FULL VALUE**

8 14. California’s property tax system assesses all property at its full value. (Cal. Const.,  
9 art. XIII, § 1; Rev. & Tax. Code, § 401.) Full value is the cash price that the property would bring  
10 on the open market, assuming neither buyer nor seller could take advantage of the exigencies of the  
11 other, *i.e.*, fair market value. Newly constructed property is assessed at its fair market value as of the  
12 date of completion and upon a change in ownership, with increases otherwise limited to two percent  
13 per year.

14 15. This case is about how the Assessor should properly assess the value of the 49ers’  
15 privately held possessory interest in public property—known in property tax law as a “possessory  
16 interest” or “taxable possessory interest.” While publicly owned property is generally either immune  
17 or exempt from taxation, private possessory rights in public property are subject to taxation.

18 16. Possessory interests in public property encompass a wide array of rights, including  
19 concessions, leases, airport permits, air rights, and mining rights. Taxation of possessory interests  
20 places rights holders in public property on equal competitive footing with rights holders in private,  
21 taxable property, who pay rent or contract prices informed by the owner’s property tax. And, in  
22 doing so, taxation of possessory interests fulfills the constitutional mandate that all owners of non-  
23 exempt property pay their fair share of the property taxes funding provision of local, public services.

24  
25 <sup>1</sup> Property tax rules adopted by the State Board of Equalization and codified in the California Code  
26 of Regulations govern the process of assessing and equalizing property values. The valuation  
27 function performed by the Assessor is referred to as “assessment,” whereas adjustment of property  
values by the AAB is referred to as “equalization.”

28 <sup>2</sup> The 49ers operates the Stadium; the related National Football League (“NFL”) team, the San  
Francisco 49ers or “TeamCo,” is a sibling entity owned by the same parent corporation.

1           17.     Under Property Tax Rule 21, subdivision (b)(1), possessory interests are assessed by  
2 calculating the value of the property parcel in question (in property law terms, the “fee simple  
3 absolute”) and subtracting the value of any rights retained by the public owner. The remainder is the  
4 taxable possessory interest.

5           18.     There are three recognized methods for determining assessed value. The comparative  
6 sales approach looks to the sale prices of other, comparable taxable properties as the starting point  
7 for the calculation. The cost approach, on the other hand, focuses on the amount that it would cost to  
8 replace or reproduce the property, with the value of the rights retained by the public owner then  
9 subtracted from that figure. And, lastly, the income approach seeks to calculate the value of the  
10 income stream that the property will generate for the private rights holder. These methods are but  
11 three different ways of getting to the same thing: fair market value.

12           19.     Under any method, the Assessor does not, in calculating the value of property rights  
13 retained by a public entity, include in the valuation benefits inuring to the public at large or to  
14 surrounding properties and businesses as a result of a development project built on nearby public  
15 property. Those broader public benefits motivate governmental entities to participate in such  
16 projects, but they have no place in determining the monetary value of the property rights created for  
17 taxation purposes. Correct application of the property tax law thus ensures that localities do not  
18 suffer an effective tax penalty by virtue of structuring public-private deals to maximize the diffuse,  
19 broader benefits of the project to the public.

20                           **THE BILLION-DOLLAR NFL STADIUM CUSTOM**  
21                           **BUILT FOR THE 49ERS ON PUBLIC LAND**

22           20.     The Stadium was custom designed as part of a public-private partnership facilitating  
23 the 49ers’ move from San Francisco to the City of Santa Clara. The parties entered into the Stadium  
24 deal with very different goals and expected benefits, united primarily by a shared perspective that  
25 their divergent goals were best effectuated by optimizing the Stadium’s use for professional football.

26           21.     The 49ers’ efforts to leave its Candlestick Park facility posed a unique set of  
27 challenges. The chosen location would need to have strong public transit and tens of thousands of  
28 parking spots to accommodate large crowds, but for only ten professional football games per year,

1 assuming no playoff games. The 49ers's management was also determined to keep "San Francisco"  
2 as part of the team brand name, despite abandoning their home city over demands for new housing  
3 as part of a stadium revitalization.

4         22.     The City of Santa Clara was a natural choice for the new site. The 49ers had leased  
5 offices and practice fields from the City since the mid-80s, sited in a redevelopment district created  
6 by the City Council. By the time that it was seriously investigating the move from Candlestick Park,  
7 that area was evolving into an up-and-coming entertainment district with an amusement park and  
8 convention center, as well as a golf course across from the Stadium site. Even before the 49ers  
9 announced the move, the area was, in the view of 49ers' Chief Financial Officer ("CFO") Larry  
10 MacNeil, primed for further development. And it was, he concluded, a well-maintained area with  
11 the excellent transportation infrastructure needed for an NFL stadium. Relocating the team to Santa  
12 Clara did not, moreover, require the approval of other NFL owners because the Santa Clara location  
13 was already within the team's NFL territory.

14         23.     In pursuing the deal, the 49ers sought to buck a widespread backlash against using  
15 taxpayer dollars to fund NFL stadiums—a sentiment fueled by the cautionary experiences of other  
16 municipalities and an emerging consensus among economists that the broader economic benefits of  
17 such projects were often overstated. CFO MacNeil was nevertheless tasked with persuading the City  
18 to make a significant investment of public money—in his words, to open the public "cookie jar"—by  
19 using cash reserves or imposing a new tax on residents to build the Stadium.

20         24.     But the City refused to put public funds and services on the line. Its leaders were  
21 acutely cognizant of the unfortunate experiences of some other municipalities, including  
22 circumstances where municipalities were reportedly forced to cut services or lay off police officers  
23 to cover stadium liabilities. City leaders made it crystal clear that its general fund, creditworthiness,  
24 and provision of services would not be placed at risk for an NFL stadium.

25         25.     The 49ers and City instead landed on an innovative deal structure that would facilitate  
26 construction while protecting the public. The City formed a public authority that would take in  
27 revenue from events other than professional football games at the Stadium and use almost all of it to  
28 fund construction, operation, and other expenses. From a land use and public policy standpoint, this

1 deal term had the advantage of avoiding a situation where a large structure at the center of the  
2 redevelopment district would sit empty for portions of the year.

3 26. The City also pledged tens of millions of dollars in public, taxpayer redevelopment  
4 funds to Stadium construction, built a garage, provided parking lots, and moved a power substation.  
5 A coalition of local hotels agreed to a supplemental room tax to further fund the Stadium.

6 27. City voters approved the project via ballot measure, amending the Santa Clara  
7 Municipal Code to authorize construction of the Stadium and creation of the Authority. (Santa Clara  
8 Municipal Code Ch. 17.20.) The private tenant, identified in accompanying literature as the 49ers,  
9 would host one or two professional football teams, holding their home games at the Stadium.<sup>3</sup>

10 28. The voters explicitly identified the Stadium's purposes in the ballot measure and  
11 accompanying ordinance. The new facility was intended to be a "professional football stadium" that  
12 could accommodate other types of events, whose construction would create new jobs, as well as  
13 spark further development and economic activity that would become a long-term revenue stream for  
14 the City. Only modest profit was to be expected, largely in the form of rent for use of the City land  
15 which included a performance-based component keyed off ticket sales. A ticket surcharge would  
16 also provide up to \$250,000 per year of funding for parks, libraries, and other public recreational  
17 facilities.

18 29. The Stadium would also, according to its environmental impact report, further the  
19 City's land use and redevelopment goals by supplying opportunities for recreation and community  
20 events, complementing existing and planned land uses in the surrounding entertainment district.

21 30. Designed by a team first retained by the 49ers to rebuild the Candlestick site, the  
22 resulting Stadium is an open-air arena where professional football reigns as undisputed king. Its  
23 1.85 million square feet center around one of the largest lower seating bowls in the NFL, placing a  
24 record 44,000 fans close to the action. Four seating tiers create a sea of red against white steel; a  
25 team logo cresting the field completes the team colors. Extra wide concourses lead fans to 68,500  
26 total seats, expandable to up to 75,000 for prestige events, such as a Superbowl or soccer World  
27

28 <sup>3</sup> The 49ers reportedly considered hosting the Oakland Raiders as a second team.

1 Cup, enhancing the Stadium's lure for anchor corporate sponsors and luxury suite holders. At the  
2 structure's apex, 49ers-owned digital scoreboards rise 188 feet into the air, blazing from the  
3 Stadium's 19,000 square feet of scoreboard space.

4 31. The interior's distinctively high-end aesthetic showcases premier, revenue-driving  
5 amenities that are the hallmark of a modern NFL stadium. Unique millwork, brocade, and custom  
6 bamboo fixtures gild the nine corporate-sponsored private clubs. The most expensive clubs and  
7 suites are lined with redwood recycled from an historic former navy hangar at Moffett Airfield,  
8 installed using special techniques to preserve original nail holes.

9 32. Nine thousand club seats, premier seating areas near the center of the field, afford  
10 private club access. One hundred and seventy-six luxury suites offer private viewing areas and a  
11 range of other amenities, stacked in a glass-front tower on the western end of the field. The tower-  
12 suite design locates all suites and clubs between end zones, with three suites on the 50-yard line.

13 33. Meanwhile, service areas are housed in non-public facing ground areas to make room  
14 for a \$22 million interactive team museum and hall of fame, designed by a different leading design  
15 firm, and a team store reportedly two to three times the size of its average NFL counterpart. A  
16 49ers-owned celebrity chef restaurant complex includes a steakhouse, pub, interactive gaming suites,  
17 and luxury lofts. A 27,000 square foot green roof topping the west tower supplies native vegetation  
18 to Stadium concessionaires and views of San José and Santa Clara.

19 **THE PRIMACY OF THE 49ERS' CONTRACTUAL RIGHTS**  
20 **OVER THOSE OF THE PUBLIC AUTHORITY**

21 34. The parties' unique partnership was memorialized in a series of agreements affording  
22 each side markedly different bundles of rights, with the deal structure unmistakably reflecting  
23 throughout the primacy of professional football games in the hierarchy of the Stadium's functions.  
24 The contracts grant the 49ers a leasehold in the Stadium for an initial 40-year term, with options to  
25 renew for an additional 20 years, as well as the right to mortgage the leasehold interest. Rent is not  
26 based on an approximation of market rent, but instead on a formula intended to cover certain  
27 Authority expenses during the highest-expense year. The agreements allocate to the 49ers year-  
28 round use of the Stadium, two forms of event scheduling priority, exclusive use of premier portions



1 of the facility, and control over all Stadium events.

2       35.     Most critically, the lease imparts to the 49ers the professional football-related uses for  
3 which the facility had been custom designed—namely, the right to use the Stadium to host one or  
4 two professional football teams and hold all NFL-related events. Professional football games are  
5 given scheduling priority over all other Stadium events. Beyond that overriding priority, the lease  
6 grants the 49ers event scheduling priority during a “tenant season” to be comprised, at a minimum,  
7 of the six months during which NFL games take place (including the valuable holiday season), with  
8 the season to be extended if NFL games go beyond that period. Authority events have scheduling  
9 priority during a season confined to that period of time not included in the tenant season.

10       36.     The 49ers are also allocated the rights to all Stadium sponsorship deals—including an  
11 array of corporate partnerships, naming rights for various discrete Stadium areas such as a plaza and  
12 deck, and the corporate branding of each private club—as well the corresponding control over  
13 Stadium branding and partnerships.

14       37.     Many of the Stadium’s crown jewels are denominated as “Exclusive Areas”  
15 reserved for the 49ers, year-round. These include the state-of-the-art interactive museum, the  
16 Michael Mina restaurant complex, the suite tower and all suites, a generously sized team store, an  
17 owner’s club and team suite, the locker rooms and training spaces, an auditorium, and an audio-  
18 visual hub. The contracts also afford the 49ers the broader, year-round right to lease the commercial  
19 areas of the Stadium for retail, restaurant, or other commercial purposes complementary to a  
20 professional football stadium.

21       38.     The 49ers, moreover, obtained year-round Stadium use for marketing, promotional  
22 events, tours, and meetings, as well as year-round use of various premier facilities and amenities.

23       39.     The Authority, for its part, took on its balance sheets revenue from the far less  
24 profitable and contractually subordinate non-NFL events, projected by the 49ers to make about \$5  
25 million in profit per year—an amount dwarfed by the far larger profit to be expected from the  
26 Stadium’s use for professional football. Authority-denominated uses include other types of sporting  
27 events and concerts, which suffer from largely one-off marketing and set-up costs as well as  
28 exorbitant promoter fees to third party entities, such as AEG and Live Nation/Ticketmaster.

1 Authority music concerts are, according to the 49ers, also disproportionately impacted by a City  
2 Council imposed curfew intended to protect the welfare of surrounding residents. Authority events  
3 also include smaller events, such as corporate parties and weddings.

4 40. Unlike the 49ers, the Authority retained no counterpart exclusive commercial or retail  
5 areas. It is allocated only the right to use a community room for non-profit civic events, at its  
6 expense and subject to the 49ers' priority use of the facility's common spaces.

7 41. Laced throughout the parties' agreements are a variety of provisions rendering the  
8 Authority's rights subordinate to those of the 49ers. The agreements give the 49ers multiple avenues  
9 to veto Authority events—including even non-profit civic and community events—whereas the  
10 Authority holds no comparable veto rights. The 49ers may, moreover, sublease the commercial  
11 areas without Authority approval. The 49ers even obtained exclusive control over the facility's  
12 video boards, whose controls are located in a 49ers-only area.

13 42. But perhaps most important is the 49ers' overriding and comprehensive management  
14 control over Stadium events: under the parties' agreements, a 49ers-related management company  
15 has sole discretion over the booking of Authority events. The parties' contracts make it extremely  
16 difficult for the Authority to terminate the 49ers' management company even for cause. In fact, the  
17 49ers and their related management company sued the Authority in early 2017 when the Mayor  
18 threatened to take over management of Authority uses.

19 43. But even if the Authority could ever oust the 49ers' management company, such a  
20 maneuver would nevertheless leave in place the 49er's contractual veto rights over non-NFL events.  
21 And while the Authority is to be consulted about development of the non-NFL event marketing plan,  
22 a 2017 audit found that the 49ers' management company was failing even to provide written reports  
23 sufficient to allow the Authority to offer meaningful input.

24 44. If the non-NFL events turn a profit notwithstanding the many hurdles, the Authority  
25 is required by its agreements with the 49ers to route the vast majority of revenue into repaying  
26 Stadium construction debt and expenses. A series of contractual provisions, referred to by the  
27 parties as the lease "waterfall," require Authority revenue to be used to fill seven different cost  
28 buckets, including expense, operating, and capital expenditure reserves; loans from the 49ers; a

1 Stadium demolition fund; and debt to other private lenders.

2       45.     Separate and apart from the “waterfall,” the lease designates certain categories of  
3 expenses as “Shared Stadium Expenses,” most of which are to be split equally by the parties,  
4 notwithstanding the Authority’s limited contractual rights. These split costs included day-to-day  
5 maintenance costs not covered by reserve funds and fees to the 49ers-related management company.  
6 This cost-sharing provision is another major obstacle hindering the Authority’s less lucrative uses  
7 from yielding a substantial profit.

8       46.     Meanwhile, the 49ers’ management control over Authority events allows it to further  
9 leverage virtually every aspect of the Stadium to forge lucrative brand and product synergies and  
10 advance its parent company’s business strategies. Authority events under this lopsided management  
11 arrangement have, for example, consistently included a roster of non-professional football games  
12 yielding net losses to the Authority every year since the Stadium’s open in 2014, all the while  
13 bearing an obvious affinity to the 49ers’ brand, retail and commercial offerings, and interest in  
14 retaining corporate sponsors and luxury suite holders. According to the Authority’s data, non-NFL  
15 football events lost about \$3 million in fiscal year 2014-15; \$2.3 million in 2015-16; \$2.9 million in  
16 2016-17; and \$3.6 million in 2017-18.<sup>4</sup>

17       47.     Other big-ticket, prestige non-NFL events, such as popular music concerts, have also  
18 in some instances posted large losses for the Authority, while offering a benefit to corporate  
19 sponsors, suite holders, and season ticket holders. A single Taylor Swift concert, for example,  
20 reportedly resulted in losses of more than \$2 million for the Authority. The 49ers-related  
21 management company dismissed the Authority’s voiced concerns about such losses by contending  
22 that they were offset by revenue from other concerts.

23       48.     Stadium uses have at times also been heavily focused on soccer, with the 49ers  
24 entering into a multi-year partnership with the San Jose Earthquakes to host soccer tournaments and  
25 lure blockbuster foreign soccer teams such as Manchester United to their stadiums. “We really like  
26

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27       <sup>4</sup> The Assessor refers at various points in this pleading to information from publicly available  
28 sources.

1 the soccer business,” 49ers President Al Guido told the Silicon Valley Business Journal in March  
2 2017, explaining that corporate sponsors “love” its international reach and that the games were a  
3 “great benefit” for suite and season ticket holders and supported the market for VIP amenities. Last  
4 year, a 49ers-related entity reportedly announced that it had purchased a stake in United Kingdom  
5 soccer team Leeds United.

6 49. Other provisions favor the 49ers in less obvious ways. Several parts of the deal are  
7 carefully structured to remove discrete chunks of revenue from the 49ers’ balance sheets in order to  
8 lessen its federal tax commitments, while at the same time retaining the 49ers’ comprehensive  
9 control over operations and branding.

10 50. One example of this strategy is the Stadium naming rights deal. The contracts vest  
11 the 49ers with control over choosing the Stadium name and grant it all associated branding rights,  
12 such as the right to sell merchandise using the Stadium name and logo. Exercising these  
13 prerogatives, the 49ers negotiated a major sponsorship deal with Levi Strauss, building on the notion  
14 that the company’s jeans were first designed for the Gold Rush 49ers who panned for gold in San  
15 Francisco. The deal spanned everything from the Stadium name, to staff and mascot uniforms, to a  
16 “Levi x 49ers” jean collaboration. It was jointly announced by the Levi Strauss and 49er CEOs just  
17 before the team’s Superbowl bid announcement, with 49ers CEO Jed York retweeting, “Welcome to  
18 the field of jeans.”

19 51. But the largest discrete chunk of the Levi’s deal, the Stadium naming rights, is  
20 denominated as Authority revenue in the parties’ contracts. This means that it stays off of the 49ers’  
21 income statements, although the Authority is required to channel the revenue into Stadium operating  
22 costs and debt repayment.

23 52. A similar strategy informs the treatment of stadium builders licenses. Football team  
24 fans were given the opportunity to help fund construction of the Stadium via a common stadium  
25 funding vehicle known as “stadium builder licenses”—seat licenses costing between around \$2,000  
26 to \$250,000 affording the holder rights to purchase football season tickets and priority in purchasing  
27 tickets for non-NFL events. Like the naming rights revenue, the Stadium agreements denominated  
28 stadium builder license proceeds as Authority revenue, in order to reduce the 49ers’ federal tax

1 burden. But any profits from stadium builder licenses are, like all Authority-denominated revenue,  
2 to be used primarily to finance the Stadium and its operations. Only a small fraction could ever  
3 make its way out of the “waterfall” and into the City general fund.

4 53. All told, the Authority’s events have only made about \$5 million in profit per year,  
5 with about half of that amount going into the City general fund via the performance-based rent in  
6 2018. The 49ers’ management company has projected that, with excitement over hosting events at  
7 the new facility waning, the non-NFL event revenue will be only about \$750,000 in 2018-19 and  
8 \$175,000 in 2019-20.

9 54. Meanwhile, despite decidedly mediocre on-field performance, the 49ers’ profitability  
10 surged since the Stadium’s 2014 open, and the Stadium has continued to stack up an extensive stable  
11 of corporate sponsorships. The Stadium hosted Superbowl 50 in 2016 and is on the short list of  
12 locations in contention to host segments of the 2026 soccer World Cup.

13 **THE BOARD’S ERRONEOUS DECISION, DRASTICALLY**  
14 **SLASHING THE 49ERS’ TAX BILL**

15 55. Considering the 49ers’ extensive control over the Stadium and assumption of  
16 virtually all of its economic value, the Assessor valued the 49ers’ possessory interest in the Stadium  
17 after its 2014 open at \$1.1 billion. The 49ers brought an administrative appeal to the Board for tax  
18 years 2014 and 2015, and later appealed assessments for each subsequent year.

19 56. As a first step in their challenge, the 49ers sought to attack the overall value of the  
20 Stadium parcel. The Board largely rejected those arguments, valuing the Stadium using the cost  
21 approach to be worth about \$890 million and the land at about \$71 million.<sup>5</sup> The Assessor does not  
22 challenge the Board’s calculation of the Stadium parcel’s overall value; the 49ers stated that it will  
23 not challenge the Board’s decision, either.

24 57. This litigation focuses on the second portion of the 49ers’ challenge, in which it  
25 argued that the value of the Stadium belongs primarily to the Authority rather than to the 49ers.  
26

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27 <sup>5</sup> The 49ers additionally own about \$366 million in personal property used for the Stadium, which is  
28 separately taxed.

1 Before the Board, the 49ers urged that it should be taxed on only 40% of the value of the Stadium.  
2 Its analysis was primarily keyed off the number of days that the Stadium was used for 49ers events  
3 versus Authority events. In other words, the 49ers treated as equivalent a small corporate event or  
4 wedding and an NFL game, and made only relatively modest adjustments to account for the 49ers'  
5 exclusive rights to commercial and retail areas.

6 58. A 49ers' witness emphasized during the hearing, however, that the parties' contracts  
7 were primarily focused on allocating rights based on types of Stadium use, rather than by time. The  
8 Assessor presented expert witnesses demonstrating that the profits generated for the public entities  
9 were *de minimis* in comparison to those generated by the 49ers' very different and far superior uses.  
10 The Assessor's experts also showed that the contractual provisions disproportionately burdening the  
11 Authority with Stadium expenses, as well as the high costs of the larger Authority events, meant that  
12 little profit could be generated by the Authority events.

13 59. In response to questioning from the Board, the Assessor recognized that the  
14 Authority's right under the parties' agreements could be considered a form of "rights retained" under  
15 the Property Tax Rules, whose value should be subtracted from the quantum of the 49ers' possessory  
16 interest. But most of the Stadium's value, the Assessor urged, lay in the professional football uses  
17 for which the Stadium was designed and built, as well as in the 49ers' extensive, year-round control  
18 over the facility. The Assessor's experts presented evidence indicating that the Authority's inferior  
19 Stadium rights would be worth only a small fraction of the Stadium's value, to a private buyer.

20 60. The 49ers elected to make the Board's decision final upon issuance of a written  
21 determination of the assessment, notwithstanding that findings of fact would not yet have been  
22 issued. The Board issued a final, written determination of the assessment on November 28, 2018. A  
23 copy of that decision is attached as Exhibit A.

24 61. Rather than undertake the required analysis of the fair market value of the rights  
25 retained by the Authority, the Board found that the Stadium's value should be allocated precisely 50-  
26 50 between the 49ers and the Authority. The Board's allocation analysis does not attempt to utilize a  
27 numerical calculation to identify the monetary value of any particular rights retained by the  
28 Authority or City or granted to the 49ers.

1           62.     In declining to attempt a calculation of the value of the rights retained by the  
2 Authority, the Board cited six purported “rights and attributes” of the parties’ lease as confirmation  
3 that they intended to, and did in fact, split the value of the Stadium exactly equally. The Board’s  
4 lease analysis did not purport to cover all important or valuable contractual rights and restrictions.  
5 Instead, based on its misreading of the contracts, the Board lumped selected, rough categories of  
6 rights into two buckets, all without ascertaining their respective monetary value, individually or in  
7 the aggregate, as follows:

- 8           • *Seasons and scheduling priority*: As the starting point for its analysis, the Board  
9 mistakenly concluded that each party was given scheduling priority for six months of  
10 the year and thus had the right to occupy the Stadium for an equal number of days.<sup>6</sup>  
11 The Board did not purport to capture differences in the value of the professional  
12 football uses and the ancillary, Authority events. Nor did it address the 49ers’ veto  
13 and management control.
- 14           • *Shared expenses*: The Board pointed to a lease provision designating certain Stadium  
15 operating expenses as shared, but did not address the far more onerous lease  
16 “waterfall” provisions earmarking almost all Authority revenue for Stadium reserves,  
17 expenses, and debt. Nor did the Board explain how the sharing of specified expenses,  
18 coupled with the disproportionate value of the parties’ distinct rights and uses,  
19 supports a conclusion that a rational purchaser would pay the same market price to  
20 step into either parties’ shoes.
- 21           • *Advertising and naming rights*: Here, too, the Board misinterpreted the detailed  
22 provisions allocating various advertising rights between the parties and granting  
23 sponsorship rights to the 49ers—including naming rights for discrete Stadium areas  
24 such as the “Intel” plaza and “Pepsi” fan deck. In any case, neither side argued, and  
25

26  
27 <sup>6</sup> It was undisputed at the hearing that scheduling priority is first and foremost governed by a  
28 provision granting overriding priority to NFL games. Beyond that, events were often scheduled  
outside of the designated seasons, so that by all accounts the lease “seasons” were neither six months  
nor particularly significant delineators of the parties’ rights.

1 the Board cited no evidence showing, that the 49ers' vast array of advertising and  
2 sponsorships rights were exactly equal in value to the naming revenue denominated  
3 as Authority revenue and pledged to Stadium expenses.

- 4 • *Suite and stadium builder license revenue*: The Board also pointed to provisions  
5 granting suite license revenue to the 49ers, while denominating stadium builder  
6 license revenue as Authority revenue to be earmarked for the waterfall. But neither  
7 side argued, and no data showed, that these very different classes of rights were equal  
8 in value.
- 9 • *Parking and concessions*: Finally, the Board cited unremarkable provisions making  
10 each party responsible for parking for its own events and granting each the  
11 concession revenue associated with its events. The Board did not address the value of  
12 the 49ers' rights to select concessionaires and to retain all concession revenue  
13 generated by its Exclusive Areas.

14 63. Much was left out of this analysis: the Board's two-bags-of-rights allocation did not  
15 purport to assign value to the 49ers' various forms of year-round use and control, including its  
16 management control, sole occupation of the Exclusive Areas, use for marketing purposes, and  
17 exclusive occupation of various other premier portions of the venue. The value of these lucrative  
18 rights was thus left wholly off the table by the Board's approach.

19 64. The Board also cited three very general propositions in rejecting the Assessor's  
20 argument that the 49ers' professional football uses and year-round control were significantly more  
21 valuable than any Authority rights. First, it found that the Authority hosted both large and small  
22 events and thus vigorously exercised its contractual rights. Of course, the Board's observation that  
23 Authority-denominated events are of varying size and quantity simply does not speak to how the  
24 value of the Authority's rights compare to the 49ers' more lucrative rights and uses.

25 65. Second, the Board found that the Authority and the City reasonably expected that the  
26 Stadium would increase the value of other publicly owned property in the vicinity. The Board cited  
27 no authority, however, for the proposition that such considerations idiosyncratic to a particular  
28 property owner may be considered in valuing a property, nor were the claimed benefits to other



1 parcels in any case quantified at the hearing.

2         66.     And, third, the Board held that the level of effort expended by the public entities to  
3 build the Stadium and negotiate non-NFL uses is evidence that those entities believed the Stadium's  
4 presence would yield broader benefits to the surrounding community. Here, too, the Board cited no  
5 authority supporting consideration of such diffuse community benefit in valuing a privately held,  
6 possessory interest.

7         67.     The 49ers submitted proposed written findings of fact on January 8, 2019, which  
8 consisted in large measure of a re-numbering of the Board's decision. The Assessor submitted  
9 objections and responses to the proposed findings of fact on February 22, 2019. Rather than issue its  
10 findings of fact, the Board then asked the 49ers to submit a supplemental reply, supported by exhibit  
11 and transcript cites, by June 30, 2019. The Assessor objected to this time frame, contending that  
12 findings of fact should be issued before the Assessor six-month time period to challenge the decision  
13 had elapsed. The Board then offered the 49ers *more* time, even beyond June 30, to submit a further  
14 reply. The Board thus has not issued findings of fact. The 49ers told the Board in a March 29, 2019  
15 submission: "We believe the Assessor already has everything he needs in order to determine whether  
16 to seek judicial review of the decision ... Findings of fact are, after all, only generated at the option  
17 of the taxpayer."

#### 18                 **THE CONSEQUENCES OF THE BOARD'S ERRONEOUS DECISION**

19         68.     The Board's 50-50 allocation is expected to slash annual property taxes on the  
20 Stadium in half, from about \$12 million to \$6 million, to the significant detriment of the surrounding  
21 communities that the Stadium project was intended to benefit. About 40% of the affected taxes are  
22 allocated to Santa Clara Unified School District, 18% to the County's general fund, 15% to a fund  
23 created under state law for augmenting local education revenue, 11% to West Valley Community  
24 College, 10% to the City, 4% to the County Office of Education, and 2% to a local water district.

25         69.     Near term, the Board's determination triggered a one-time refund of over \$36 million,  
26 forecasted to result in first-year losses of over \$13 million to the Santa Clara Unified School District,  
27 over \$3 million to West Valley Community College, about \$3 million to the City, and over \$5  
28 million to the County general fund, among other expected losses.

1           70.     The decreased tax base resulting from the ruling will also slightly increase tax rates  
2 for all County and school district taxpayers, as tax rates are adjusted to meet debt service payment  
3 schedules for outstanding County, water district, and school and college district bonds.

4                                   **PROPRIETY OF WRIT RELIEF**

5           71.     The challenged decision is final. Pursuant to Property Tax Rule 325, the 49ers elected  
6 for the Board's decision to be final upon issuance of a written decision, rather than upon subsequent  
7 issuance of findings of fact. A transcript excerpt reflecting that election is attached as Exhibit B.  
8 The Board is thus prohibited under Property Tax Rule 326 from reconsidering or substantively  
9 modifying its decision.

10          72.     The Assessor exhausted its administrative remedies through its participation in the  
11 administrative proceedings before the Board.

12          73.     The Assessor has requested that the Clerk of the Board prepare the administrative  
13 record of the proceedings below. That request is attached as Exhibit C.

14          74.     The Assessor has no plain, speedy, and adequate remedy at law to challenge the  
15 Board's decision. Under Code of Civil Procedure §1094.5, this Court has authority to review the  
16 Board's decision. This Court's jurisdiction is also recognized by Revenue & Taxation Code §1615.

17          75.     This action is timely, because it was brought within the applicable six-month statute  
18 of limitation. (Rev. & Tax. Code, §1615.)

19                                   **FIRST CAUSE OF ACTION FOR ADMINISTRATIVE MANDAMUS**

20                                           **[Against the AAB]**

21          76.     The Assessor realleges and incorporates by reference each and every allegation set  
22 forth above.

23          77.     The Board's adoption of an unauthorized valuation method to determine the 49ers'  
24 possessory interest exceeded its jurisdiction and constituted a prejudicial abuse of discretion.

25          78.     With its unsupported "50-50" allocation, the Board failed in its constitutional  
26 obligation to calculate the full value of the 49ers' possessory interest. The resulting determination  
27 was not grounded in any recognized or reasonable metric or method for measuring fair market value.  
28 It was thus erroneous as a matter of law, arbitrary and capricious, and not supported by substantial

1 evidence. The Board's efforts to simply lump exemplar contractual rights into two piles cannot  
2 lawfully act as a substitute for a method reasonably calculated to arrive at full value.

3 79. Under Property Tax Rule 21, subdivision (b)(1), the Board should have determined  
4 the value of the 49ers possessory interest by calculating the cash value of rights retained by the  
5 public owners and subtracting that amount from the overall value (*i.e.*, fee simple value) of the  
6 Stadium parcel.<sup>7</sup> The Board erred as a matter of law in neglecting to undertake the required  
7 calculations.

8 80. The Board compounded its error by concluding that any differences in the parties'  
9 respective Stadium uses could be disregarded given that the Stadium provided other, diffuse  
10 economic and non-economic benefits to the City and the surrounding community. No property tax  
11 statute or rule permits the Assessor to value these idiosyncratic benefits to the public owner, benefits  
12 to third parties, and intangible benefits. Nor was the purported value of such benefits in any case  
13 quantified during the hearing.

14 81. The Board further erred by relying on Property Tax Rule 21, subdivision (e)(2)(B), a  
15 provision governing allocation of possessory interests between two private possessors where  
16 possession is shared or time-limited.<sup>8</sup> That provision does not apply here, as it was undisputed that  
17 the public entities are not private "possessors" within the meaning of the Property Tax Rules. As set  
18 forth above, any public entity rights in the property are instead properly taken into account as "rights  
19 retained" pursuant to Property Tax Rules 21, subdivision (b)(1). But the cited rule, Rule 21,  
20 subdivision (e)(2)(B), in any case requires allocation based on *value*, not on time. Thus, even if it  
21 had been applicable, it would lend no support to the Board's numbers-free mode of allocation.

---

23 <sup>7</sup> Rule 21, subdivision (b)(1), provides as follows: "The fair market value of a taxable possessory  
24 interest is not diminished by any obligation of the possessor to pay rent or to retire debt secured by  
25 the taxable possessory interest. In other words, the fair market value of a taxable possessory interest  
26 is the fair market value of the fee simple absolute interest reduced only by the value of the property  
rights, if any, granted by the public owner to other persons and by the value of the property rights  
retained by the public owner (excluding the public owner's right to receive rent)."

27 <sup>8</sup> Rule 21, subdivision (e)(2)(B), provides that "[i]f a possessor's property use is limited to specified  
28 time periods (*e.g.*, certain hours of the day or certain days of the week) or is shared with other  
possessors, the value determined by the cost approach shall be reasonably allocated to each  
possessor in a manner that reflects each possessor's proportionate value of the right to possession."

1           82.     Indeed, the Board failed even to calculate the value of items identified in the Property  
2 Tax Rules as examples of rights to be valued—including the rights to mortgage, to sublease, or to  
3 allow other possessors to use the property. (Property Tax Rules, Rule 21, subdiv. (b)(2).) And it  
4 similarly did not purport to assign any value to the 49ers’s Exclusive Areas, including the team store,  
5 museum, restaurant complex, owner’s club and team suites, team locker room, and audio-visual hub.

6           83.     The Board’s analysis was, moreover, grounded in several fundamental  
7 misinterpretations of the parties’ contracts—legal errors that this Court can review as a matter of  
8 law. For example, the Board thrice reiterated in its decision the mistaken notion that the parties had  
9 the right to possess the Stadium for an equal number of days. As both sides pointed out, the  
10 contracts denominated tenant and Authority seasons as a secondary means of assigning event  
11 scheduling priority. These seasons did not delineate the right to possession or, in any case,  
12 necessarily include the same number of days. Rather, the 49ers held rights to multiple forms of  
13 year-round use and had overriding control over all Stadium events, year-round.

14           84.     The decision was similarly grounded in factual conclusions that neither party  
15 advanced and that *no* evidence, let alone substantial evidence, supported. There was no evidence,  
16 for example, that professional football uses were precisely equal in value to other Stadium uses. Nor  
17 did either side argue that naming revenue and advertising/sponsorship rights were precisely equal in  
18 value. Similarly, no evidence showed that differences in the revenue generated by the parties’  
19 events was attributable to the parties’ respective business acumen, as the Board had concluded. To  
20 the contrary, the testimony showed that a single 49ers executive managed both the 49ers’ business  
21 and Authority events.

22           WHEREFORE, the Assessor prays that:

- 23           1.     A peremptory writ of mandate issue, directed to the Board pursuant to Code of Civil  
24 Procedure §1094.5:
- 25               a.     Vacating the Board’s decision addressing the allocation of the Stadium’s value  
26                      and/or compelling the Board to set aside that portion of its decision addressing the  
27                      allocation of the Stadium’s value;
  - 28               b.     Directing the Board to: (i) calculate the quantum of the 49ers’ possessory interest  
                    by subtracting the fair market value of the rights retained by the public entities

1 from the value of the fee simple absolute; or, in the alternative, (ii) calculate the  
2 quantum of the 49ers' possessory interest by utilizing a method reasonably  
3 calculated to arrive at full value and supported by substantial evidence (as  
4 applicable).


- 5  
6 2. Petitioner recover costs in this action; and  
7  
8 3. The Court grant such other relief as is just and proper.  
9

10 Dated: May 20, 2019

Respectfully submitted,

11 JAMES R. WILLIAMS  
12 County Counsel

13 By:

14   
15 SUSAN P. GREENBERG  
16 Deputy County Counsel

17 Attorneys for Petitioner  
18 SANTA CLARA COUNTY ASSESSOR  
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28

## **EXHIBIT A**

# County of Santa Clara

## Office of the Clerk of the Board of Supervisors

County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110-1770  
(408) 299-5001 FAX 938-4525 TDD 993-8272  
Web site: <http://www.sccgov.org/portal/site/cob/>



November 28, 2018

Coblentz Patch Duffy & Bass LLP  
Attn: Jonathan R. Bass  
One Montgomery Street, Suite 3000  
San Francisco, California 94104-5500

Santa Clara County Office of the Assessor  
Attn: John Recchio  
County Government Center  
70 West Hedding Street, 5<sup>th</sup> Floor East Wing  
San Jose, California 95110-1770

RE: Forty Niners SC Stadium Co LLC  
Appeal Nos. 15.0278, 15.0279, 15.0280 and 15.0281

After a review of the testimony and consideration of all exhibits, the Board directs the Assessor to record the following values for StadCo's possessory interest, for the following dates.

	August 2, 2014	January 1, 2015
Land	\$35,580,251	\$35,580,251
Improvements	\$444,950,479	\$444,950,479

Applicant is directed to prepare proposed findings and to provide an electronic copy of the proposed findings to the Assessor's representative and to the Clerk of the Board within 45 days of the date of this letter. The Clerk of the Board will forward a copy of the proposed findings to the AAB and its counsel.

Within 45 days after receiving the proposed findings prepared by Applicant, the Assessor's office shall submit its objections and/or response, if any, by providing an electronic copy of its objections and/or response, if any, to the Applicant's representative and to the Clerk of the Board. The Clerk of the Board will forward a copy to the AAB and its counsel. The AAB will then direct its counsel in preparing the final findings.

If Applicant desires to withdraw its request for findings, the AAB will grant that request. If the Applicant desires to withdraw its request for findings, it shall promptly so notify the Clerk of the Board and shall simultaneously provide a copy of that notice to the Assessor's office. The Clerk of the Board will forward a copy to the AAB and its counsel. If Applicant withdraws its request

for findings, the Assessor's Office shall promptly notify the Clerk of the Board and the Applicant as to whether or not the Assessor's Office is requesting Findings. In the event that the Assessor's Office requests findings, the time-period for Applicant to submit the proposed findings will run from the date of the Assessor's notification.

## **Valuation Approach**

The Cost Approach is the preferred approach to value when neither reliable sales data nor income data is available. The Cost Approach is particularly relevant for new construction, or property that does not suffer from obsolescence or depreciation. With regard to a possessory interest valuation, the cost approach is often used when improvements are constructed by the possessor.

The subject is a Special Purpose Limited Market property. On the lien date the improvements are new, unique, and constructed by the possessor. Accordingly the Cost Approach is the best indication of value for the subject.

The Stadium Rent was to be set at an amount that, when combined with all other SCSA revenue from the Stadium, would provide SCSA with sufficient revenue to pay its expenses and debt service for the year in which the deficit was projected to be its greatest.

The respective parties attempted to bracket the subject's base rent within a wide range of other Stadiums across the Country, applying a number of significant adjustments. This effort was complicated by the financial structure and partnership arrangements in the construction and operation of the respective stadiums; these arrangements are unique to each stadium and the adjustments employed did not result in a convincing argument of market rent for the subject. Because a reasonable estimate of market rent does not result from the respective analyses, no emphasis is placed on the Income Approach.

## **Direct Costs**

Select offsets are applied against the total project costs outlined in the KPMG Cost Segregation Study. While the parties employed slightly different versions of this study, the cost offsets outlined below reference the 14 page study dated May 2016 and illustrated in Applicant's Exhibits 8 & 72. While the parties largely agreed to the costs that should be excluded, the differences are determined as outlined in the following table. For example, the original cost offset for offsites of \$13,362,533 (Applicant's Exhibit 27) is reduced by \$1,665,009 for nine items within the KPMG study that are considered to be part of the stadium construction. Accordingly, the offset for offsites totals \$11,697,524.



		Adjusted Costs	Adjusted Cost Offsets	Subtotals	Reference
<b>Total Project Costs</b>				\$1,345,955,758	Applicant's Exhibit 27 page 1
<b>Cost Offsets</b>					
	StadCo Personal Property		\$316,746,127		Applicant's Exhibit 27 page 1
	Manco Personal Property		\$5,613,728		Applicant's Exhibit 27 page 1
	Candlestick Termination Cost		\$5,423,484		Applicant's Exhibit 27 page 1
	Yahoo Parking Lot Improvements		\$6,698,077		Applicant's Exhibit 27 page 1
	TechMart Pre-Sale Space TT's		\$1,713,397		Applicant's Exhibit 27 page 1
	Golf Course Improvements		\$3,956,391		Applicant's Exhibit 27 page 1
	Great America Theme Park Rights/Easement		\$12,500,000		Applicant's Exhibit 27 page 1
	Other Appurtenant Easements		\$250,000		Applicant's Exhibit 27 page 1
	Election / Pre-zoning Costs		\$7,589,257		Applicant's Exhibit 27 page 1
	Offsites	\$13,362,533			Applicant's Exhibit 27 Tab 10
	SCVWD Easement ATT Fiber optic Relocation	(\$118,401)			Assessor Exhibit EL page 27 - KPMG Study Line 66
	SVP Joint Trench Fiber optic Relocation	(\$283,499)			Assessor Exhibit EL page 27 - KPMG Study Line 67
	SVP Joint Trench Fiber optic Relocation	(\$293,429)			Assessor Exhibit EL page 27 - KPMG Study Line 69
	Expedite Site work	(\$2,246)			Assessor Exhibit EL page 27 - KPMG Study Line 72
	Levee Path Maintenance	(\$35,835)			Assessor Exhibit EL page 27 - KPMG Study Line 74
	Landscape Projects	(\$18,017)			Assessor Exhibit EL page 27 - KPMG Study Line 169
	AECOM Transportation Management Consultants	(\$854,188)			Assessor Exhibit EL page 27 - KPMG Study Line 171
	AECOM Traffic Management/Engineering	(\$8,544)			Assessor Exhibit EL page 27 - KPMG Study Line 175
	AECOM Parking Engineering	(\$50,850)			Assessor Exhibit EL page 27 - KPMG Study Line 176
	Net Offsites		\$11,697,524		
	EIR		\$725,826		Applicant's Exhibit 27 page 1
	Legal Fees Related to Election, EIR & Entitlements		\$6,340,499		Applicant's Exhibit 27 page 1
	Project Re-Financing Costs	\$56,102,882			Applicant's Exhibit 27 page 1
	Construction Financing	(\$19,771,763)			Applicant's Exhibit 8 - KPMG Study Line 426
	Net Project Re-Financing Costs		\$36,331,119		
	Stadium Authority Sub loan Capitalized Interest		\$19,656,951		Applicant's Exhibit 27 page 1
	General Contractor Early Completion Incentive		\$5,000,000		Applicant's Exhibit 27 page 1
	Publicly-Owned Personal Property		\$8,170,595		Applicant's Exhibit 27 page 1
	Public Safety Training	\$1,370,656			Applicant's Exhibit 27 page 1
	Other Appurtenant Easements	(\$250,000)			Applicant's Exhibit 27 Tab 8
	Net Public Safety Training		\$1,120,656		Applicant's Exhibit 27 page 1
	Pre-Opening Event / Business Expense		\$1,230,031		Applicant's Exhibit 27 page 1
	Work Not-In-Place - DOV		\$25,298,686		Applicant's Exhibit 27 page 1
<b>Total Offsets</b>				\$476,062,348	
<b>Net Cost</b>				\$869,892,410	
<b>Cost Escalator of 2.3%</b>				\$20,007,548	
<b>Direct Costs</b>				<b>\$889,900,958</b>	

## **Cost Escalator**

Testimony taken from Mr. MacNeil stated that projects such as the subject would incorporate built-in cost escalators to account for increases in cost over the development period.

Accordingly, a cost escalator from the beginning of the development period would overstate the cost for the subject. Applicant's Exhibit 71 demonstrates a rather consistent outlay of expense over the construction period, indicating a mid-point cost escalator would be appropriate to adjust all of the construction costs to the lien date. The best evidence of a cost escalator would be 2.3%, reported by Marshall & Swift Valuation Service, for the final 50% of the construction period (Applicant's Exhibit 67 page 41).

## **Depreciation**

Mr. MacNeil testified with regard to areas where he believes costs savings could have been realized with no loss in functional utility. Mr. MacNeil cited 11 areas where he argued that cost savings could have been realized (Exhibit 60 Tab 4 page 1). The Board was not persuaded by Mr. MacNeil's line of reasoning.

- Under cross examination Mr. MacNeil testified that each of these improvements evolved over a number of years from weekly design meetings with approximately 30 people comprising architects, salespeople and stadium operations people (Transcript - Page 2249 Line 20). Conversely, Mr. MacNeil's opinion that select improvements could have been eliminated, downsized or completed with lower quality finishes is based on his personal observation rather than on any study (Transcript - Page 2264 Line 19). The more compelling observation is that the "committee of 30" believed that the design was optimized.
- Mr. MacNeil confirmed previous testimony that the availability of favorable financing determined the timing of the stadium development and that the parties had full knowledge that the costs would increase as a result of this decision study (Transcript - Page 2264 Line 19).
- Costs for both the artwork and interior buildout of StadCo's exclusive use areas are included on the unsecured roll and are not part of this appeal.
- There is no evidence to suggest the SCSA would have been in favor of a lower quality stadium with smaller seats and dead space within the building envelop.
- Even if Mr. MacNeil's testimony was taken at face value, none of the information would have been available to owner or occupant on the lien date.

Accordingly, as of the lien date, the subject improvements do not suffer from any physical, functional or economic obsolescence.

## **Term of Possession**

Having considered all the evidence and taking all factors into consideration, coincident with the ground lease, a possessory term of 40 years is reflected for the subject.

## Land Value

The highest and best use of the land, as if vacant, must be a legally permissible use (one of the four components of the highest and best use). Accordingly, the use must be consistent with the General Plan for the site. The subject carries a Regional Commercial General Plan Designation with a maximum FAR of 0.60 to 1.

The considerably talented expert witnesses for both the Applicant and Assessor put forth land sale comparables in a variety of formats over the course of the hearing that resulted in quite disparate unit value conclusions. The respective sale comparables, adjustments and overall analysis suffered on cross examination. Consequently, the adjusted land sale prices submitted by the parties for the subject were not considered to be the best evidence of market value for the subject site.

The Assessor's expert valued the land under the assumption that a prospective buyer would compensate the seller for a land use that would require a General Plan amendment which would afford a significantly higher density than what is legally permissible. The Board respectfully disagrees with this assumption. Notwithstanding the risks involved and the logistical constraints of such a development on the subject site, if the comparables were adjusted to reflect the necessary additional expense to provide onsite parking for such an intense development, the resulting adjusted unit value would not support the maximally productive use of the land if vacant.

The applicant presented three comparables reflecting a "sports or recreational use" (Applicant's Exhibit 47 page 106) and continued to defend the analysis despite introducing other comparables at the end of the hearing. The concluded unit value (\$28 per square foot of land area for the fee and \$15.09 per square foot of land area for the contribution to the possessory interest) does not support the maximally productive use of the land if vacant.

The ground lessor and ground lessee retained an outside consultant to determine fair market rent for the subject land. This outside consulting firm reviewed 50 sales transactions, eventually focusing on 7 land sales that best represented their opinion of value for the subject. The comparable on which the neutral party placed the greatest emphasis carried an FAR that was just under the maximum FAR afforded by the General Plan for the subject. The ground lessor and ground lessee adopted the consultant's recommendation which became the basis for the ground lease revenue and concomitant discount rates.

Both the applicant and assessor had ample opportunity to present just one witness or affidavit explaining why the ground rent, identified as market rent in the contract, was believed to be something other than market rent agreed to by the sophisticated principals that were party to the transaction, yet failed to do so. The resulting cash flow includes the fixed ground rent stipulated in the ground lease, the additional performance based rent and the Santa Clara Youth Program Fee. Contrary to testimony, Section 8.2 of the ground lease clearly delineates the Santa Clara Youth Program Fee as "Additional Rent" paid by the lessee to the City.

	Base Rent	Performance Rent	Youth Program Fee
Year 1	180,000	1,666,667	156,667
Year 2	215,000	2,557,500	235,000
Year 3	250,000	2,608,625	235,000
Year 4	285,000	2,657,416	235,000
Year 5	320,000	2,709,914	235,000
Year 6	355,000	2,784,161	235,000
Year 7	390,000	2,820,203	235,000
Year 8	425,000	2,878,083	235,000
Year 9	460,000	2,937,848	235,000
Year 10	495,000	2,999,544	235,000
Year 11	1,000,000	2,828,220	235,000
Year 12	1,000,000	2,911,428	235,000
Year 13	1,000,000	2,998,711	235,000
Year 14	1,000,000	3,084,129	235,000
Year 15	1,000,000	3,173,732	235,000
Year 16	1,100,000	3,215,575	235,000
Year 17	1,100,000	3,309,715	235,000
Year 18	1,100,000	3,406,207	235,000
Year 19	1,100,000	3,505,113	235,000
Year 20	1,100,000	3,606,490	235,000
Year 21	1,200,000	3,660,403	235,000
Year 22	1,200,000	3,766,913	235,000
Year 23	1,200,000	3,876,086	235,000
Year 24	1,200,000	3,987,988	235,000
Year 25	1,200,000	4,102,687	235,000
Year 26	1,300,000	4,170,255	235,000
Year 27	1,300,000	4,290,761	235,000
Year 28	1,300,000	4,414,280	235,000
Year 29	1,300,000	4,540,887	235,000
Year 30	1,300,000	4,670,659	235,000
Year 31	1,400,000	4,753,676	235,000
Year 32	1,400,000	4,890,018	235,000
Year 33	1,400,000	5,029,768	235,000
Year 34	1,400,000	5,173,012	235,000
Year 35	1,400,000	5,319,838	235,000
Year 36	1,500,000	5,420,333	235,000
Year 37	1,500,000	5,574,592	235,000
Year 38	1,500,000	5,732,707	235,000
Year 39	1,500,000	5,894,774	235,000
Year 40	1,500,000	6,060,894	235,000
Discount Rate	6%	10%	6%
Component Value	\$11,347,395	\$28,854,502	\$3,461,980
Overall Land Value			\$43,663,877

The sandwich lease eliminates potential error due to adjustments to the comparables presented and rebutted by the respective expert witnesses, for size, location, lot configuration, development rights, off sites and parking rights.

Because the ground lease accurately reflects the value of the possessory interest, there is no need to estimate a reversion.

Taking all factors into consideration, the present value of the income realized by the ground lease is the best evidence in the record for the land value component of the possessory interest.

#### *Market Conditions Adjustment*

Because the agreement was ratified two years prior to the lien date, a market conditions adjustment is warranted. The subsequent amendments to the ground lease are entirely unrelated to the original agreement between the parties with regard to the figures in the preceding table. Based on testimony on the appropriate adjustment for time (Applicant's Exhibit 47 Page 104) a 20% upward adjustment is appropriate to account for changes in market conditions over time.

#### *Additional Costs for a Developable Site*

Select costs that were excluded from the direct cost estimate are added to the resulting land value in order to reflect the total cost of a developable site. Contrary to statements made in the Assessor's closing brief and reply brief, the two appurtenant easements in favor of the subject were ratified on January 1, 2012; the memorandum from Keyser Marston Associates Inc. to the Santa Clara City Council was dated February 24<sup>th</sup> 2012. The easements and analysis not only predate the ground lease, but are fully incorporated into both the contract and the aforementioned rent analysis; accordingly, the easements are not included as additional costs.

Overall Land Value		\$43,663,877	
Market Conditions Adjustment (20%)		\$8,732,775	
Election / Pre-zoning Costs	\$7,589,257		
Offsites	\$11,697,524		
EIR	\$725,826		
Legal Fees	<u>\$6,340,499</u>		
Total Additional Costs		<u>\$18,763,849</u>	
Indicated Land Value			\$71,160,502
Indicated Land Value psf Land			\$72.92

## Allocation

In order to determine the proper allocation for StadCo's value of the right to possession, the Board considered both the rights afforded each party in the Stadium lease and the relative right to utilize the subject improvements.

Property Tax Rule 21(e)(2)(B) states:

If a possessor's property use is limited to specified time periods (e.g., certain hours of the day or certain days of the week) or is shared with other possessors, the value determined by the cost approach **shall be reasonably allocated to each possessor in a manner that reflects each possessor's proportionate value of the right to possession.**

Shared or limited rights of possession reduce the value of a possessory interest - Vanguard Car Rental USA, Inc. v. City of San Mateo (2010) 181 Cal.App.4th 1316.

For purposes of subdivision, concurrent use of real property demonstrating a primary or prevailing right also includes alternating uses of the same real property by more than one party, such as the case when certain premises are used by a professional basketball team on certain days of each week while a professional hockey team uses the same premises on certain other days (Assessor's Handbook 510 Page 9).

The lease between the SCSA and StadCo basically divides the number of days during which each party has a right to possession of the property during the course of a year equally (50% to StadCo and 50% to the SCSA); however, determining the value of StadCo's possessory interest, expressed as a percentage of the value established by the Cost Approach, is not as simple as merely counting the days that StadCo has a right to use the property.

The Assessor assigns all, or substantially all, the value of possession of the property to StadCo, and argues that the SCSA interest has only a de minimus value. The Assessor argues by analogy that the Stadium property is like a ski resort where the right of possession during the ski season has a value vastly greater than possession during summer non-skiing months. Thus, the Assessor argues, an allocation based only on each party's total time of possession fails to reflect the relative value of days during the football season (StadCo days - as opposed to the days in the off season retained by SCSA).

This analogy has a certain appeal. The property is, after all, a football stadium. But the evidence tells a different story. First, the SCSA has the right to use the stadium for events large and small, a right it has vigorously exercised. Second, the SCSA and its constituent members (especially the City of Santa Clara) have reasonably expected an increase in value of its other properties due to proximity to the stadium. Third, the level of effort expended by the SCSA and its constituent members to build the stadium in Santa Clara and firmly negotiate the SCSA uses is ample evidence that they believed the presence of the stadium for all its intended uses would have a significant value to their community beyond any direct financial return.

Thus, we conclude that the Assessor's 100% allocation to StadCo is incorrect. We also conclude that there is insufficient evidence in the record to allocate value by analyzing the relative profitability of the respective uses by StadCo and the SCSA. The Assessor presented a good deal of evidence that the 49er ran a profitable enterprise using the stadium for football purposes, something the Assessor says the SCSA failed to do using the property for its purposes. But, we conclude that this evidence (much of which has been controverted by StadCo) is fatally flawed.

StadCo revenues are clearly and substantially informed by the StadCo/49er's "enterprise" value; a value driven by StadCo/49ers business operations rather than the real estate. We note that although parsing the enterprise value from income driven solely by the real estate is theoretically possible, no such evidence has been offered.

Conversely, StadCo has attempted to parse the stadium core and shell between its exclusive use and common areas, meticulously summed up the days of actual use by each party, summarized major stadium wide uses by both parties, adopted a factor weighing the numerous partial uses by SCSA, and based on this accounting, concluded that that StadCo should be allocated 100% of their exclusive use areas and only 40% of the value of the total possessory interest shared by StadCo and SCSA.

This approach has a certain appeal. It has an appearance of precision, and it looks not to the contractual days of right to possession, but to the history of the days of actual possession; an apparently more empirical inquiry. But, essentially StadCo is arguing that we should allocate value to StadCo based on frequency of use. We conclude that frequency of use alone is an inadequate measure of relative value. Although we have rejected the Assessor's 100% allocation of value to StadCo, we have not forgotten that this is, after all, a football stadium and absent the football stadium the shell and core areas occupied for StadCo's exclusive use have no contributory value; the allocation must be attributed to the aggregate improvements. Common sense dictates that StadCo's use of this football stadium does not have a lesser value than SCSA's non-football uses. We find that the record does not contain evidence adequate to support StadCo's allocation of value based essentially on historical data regarding days of use. The facility was available for use 50% of the time by Stadco and 50% of the time by SCSA; their respective actual use is a measure of their business acumen and relates to enterprise value, not real property value.

The Stadium Lease incorporates the following rights and attributes:

- The Lease Year is divided into 2 seasons. Tenant season (StadCo) is 6 months, and SCSA season is 6 months (Lease, Sections 1.2.1 and 1.2.2)
- StadCo has primary scheduling rights for usage during Tenant season, and SCSA has primary scheduling rights for usage during SCSA season. (Lease, Section 4.9: Event Scheduling Procedures)

- Parties jointly license Concession Rights. Concession revenue is StadCo revenue during NFL Events; Concession revenue is SCSA revenue during non-NFL events. (Lease, Section 7.3: Concessions)
- StadCo receives Suite License Revenues; SCSA receives SBL Revenues. (Lease, Sections 13.2 and 12.4, respectively)
- StadCo receives advertising rights; SCSA receives naming rights. (Lease, Section 15: Stadium Signage, Advertising and Sponsorships)
- Each party is responsible for managing and operating parking for its own events. (Lease, Section 7.4: Stadium Parking)
- Stadium expenses are shared. (Lease, Section 8.3.1)

We are persuaded that the lease between StadCo and the SCSA was nothing if not an arm's length transaction concluded after lengthy negotiations with both parties highly motivated and well represented. We note that in the end each party had the right to possess the property for an equal number of days. We find, based on our reading of the lease as a whole, and in light of the apparently balanced bundle of rights reserved to each party, that the fully realized intent of the parties to the lease was to obtain rights of a balanced and equal value for each party in the shared spaces in the property. Thus, we find that StadCo's possessory interest is equal to 50% of the value concluded by the Cost Approach.

Sincerely,



Richard Labagh  
Assessment Appeals Board I

Cc: Charmaine G. Yu, Coblentz Patch Duffy & Bass LLP  
Sean P. J. Coyle, Coblentz Patch Duffy & Bass LLP  
Robert A. Nakamae, Deputy County Counsel for The Assessor  
Mark F. Bernal, Deputy County Counsel for the Assessor  
Marcy Berkman, Deputy County Counsel for the Assessment Appeals Board



## **EXHIBIT B**

ASSESSMENT APPEALS BOARD I

SPECIAL HEARING

RE:

Forty Niners SC Stadium Company

Appeals 15.0278, 15.0279, 15.0280, 15.0281

**CERTIFIED  
TRANSCRIPT**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APRIL 24, 2018

DAY 21

THE SOUZA GROUP  
Certified Shorthand Reporters  
4615 First Street, Suite 200  
Pleasanton, California 94566

Reported by:  
Gina V. Carbone, CSR No. 8249  
RPR, RMR, CRR, CCRR, CLR

1 Cadillac, but for what it's worth to you, I think you've  
2 got a Cadillac.

3 MR. LABAGH: Mr. Bass, before I ask for a  
4 motion, did you want to comment with regard to whether  
5 or not you wanted to request our decision to become  
6 final at the time we sign and release the findings?

7 MR. BASS: So I was hoping to have an  
8 opportunity to discuss the implications with my client  
9 and then perhaps give a call to county counsel or  
10 assessor's counsel tomorrow. Is that -- is that not  
11 acceptable?

12 MR. NAKAMAE: I won't be here.

13 MR. BASS: Well, it's really the -- it's really  
14 the applicant's option. You don't play a role.

15 MR. NAKAMAE: He said he would call me --

16 MS. BERKMAN: Maybe we should take a quick  
17 break while the applicant refers to the property tax  
18 rule that's relevant. Take a break so that he can look  
19 over the property tax --

20 MR. LABAGH: We can resolve this. Take as long  
21 as you need.

22 Mr. Nakamae.

23 MR. NAKAMAE: I did have some comments that I  
24 wanted to make before we adjourn.

25 MR. LABAGH: Let's take a ten-minute break.

1 MR. NAKAMAE: Okay. Thank you.

2 (Recess taken from 3:59 PM to 4:12 PM)

3 MR. LABAGH: We're back of the record.

4 Mr. Bass.

5 MR. BASS: On behalf of the applicant, we would  
6 like the decision to become final at the earliest  
7 possible date. So we're -- we will not request that it  
8 be -- the finality be delayed until the findings are  
9 issued. You'll reach a decision, it will be final, and  
10 we'll get the findings, or perhaps you'll ask one or  
11 another party or both to submit proposed findings. But  
12 that's the way we'd like to do it.

13 MR. LABAGH: Fair enough.

14 Mr. Nakamae.

15 MR. NAKAMAE: I just have a couple of  
16 housekeeping matters I wanted to take care of. We had  
17 an exhibit which was BO, and I believe that was the  
18 flash drive. And I can't remember off the top of my  
19 head if it included all of the Assessors' Handbooks that  
20 we've been referencing, which are really 501, 502, 510,  
21 and then possibly the Assessment Appeals Manual too.

22 If they're not already included on that flash  
23 drive, I think that those four materials from the Board  
24 of Equalization should be part of the administrative  
25 record.

## **EXHIBIT C**

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)  
DOUGLAS M. PRESS, Assistant County Counsel (S.B. #168740)  
2 STEVE MITRA, Assistant County Counsel (S.B. # 244054)  
ROBERT A. NAKAMAE, Deputy County Counsel (S.B. #148561)  
3 SUSAN P. GREENBERG, Deputy County Counsel (S.B. #318055)  
OFFICE OF THE COUNTY COUNSEL  
4 70 West Hedding Street, East Wing, Ninth Floor  
San Jose, California 95110-1770  
5 Telephone: (408) 299-5900  
Facsimile: (408) 292-7240  
6

7 Attorneys for Petitioner  
SANTA CLARA COUNTY ASSESSOR

*Exempt from Filing Fees Pursuant to  
Gov. Code § 6103*

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
9

10  
11 LAWRENCE E. STONE, SANTA CLARA  
12 COUNTY ASSESSOR,

No.

**REQUEST FOR ADMINISTRATIVE  
RECORD**

13 Petitioner,

14 v.

15 SANTA CLARA COUNTY ASSESSMENT  
16 APPEALS BOARD NO. 1,

17 Respondent.

18 FORTY NINER SC STADIUM COMPANY,  
19 LLC

20 Real Party in Interest.  
21

22 **TO: CLERK OF THE BOARD, SANTA CLARA COUNTY ASSESSMENT APPEALS**  
23 **BOARD NO. 1:**

24 You are hereby requested by LAWRENCE E. STONE, SANTA CLARA COUNTY  
25 ASSESSOR, a party in the above-titled proceedings, to prepare the complete administrative record  
26 for Assessment Appeals Board Appeal Nos. 15.0278, 15.0279, 15.0280, 15.0281, as listed on  
27 EXHIBIT A hereto. Once the administrative record is prepared, you are requested to deliver it to the  
28 Superior Court, excluding those records designated on Exhibit A hereto as "Closed Session" or

1 "SEALED". For each record designated as "Closed Session" or "SEALED" the undersigned  
2 requests that you substitute in its place a page designating the title of the record and either "Closed  
3 Session" or "SEALED" as appropriate.

4 You are further requested to deliver to the undersigned a complete set of the administrative  
5 record, including those records designated as "Closed Session" or "SEALED." The undersigned  
6 shall thereafter meet and confer with Real Party in Interest regarding the method of delivering to the  
7 Superior Court those records designated as "Closed Session" or "SEALED."

8 Dated: May 20, 2019

Respectfully submitted,

JAMES R. WILLIAMS  
County Counsel

By: 

SUSAN P. GREENBERG  
Deputy County Counsel

Attorneys for Petitioner  
SANTA CLARA COUNTY ASSESSOR

2011418

**EXHIBIT A****INDEX TO ADMINISTRATIVE RECORD**

**Forty Niners SC Stadium Co., LLC**  
**Assessment Appeals Board**  
**Appeal Nos. 15.0278, 15.0279, 15.0280, 15.0281**

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		Application No. 15.0281
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		COB Correspondence 9.21.15 (15.0278)
		COB Correspondence 9.21.15 (15.0279)
		COB Correspondence 9.21.15 (15.0281)
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		Assessor's Exhibit CG (SEALED)
		Assessor's Exhibit CH (SEALED)
		Assessor's Exhibit CI (SEALED)
		Assessor's Exhibit CJ (SEALED)
		Assessor's Exhibit CK
		Assessor's Exhibit CL (SEALED)
		Assessor's Exhibit CM (SEALED)
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